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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,982	01/10/2002	Frank Taverite	TAVF 101	8468

7590

08/11/2004

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EXAMINER

HENDERSON, MARK T

ART UNIT PAPER NUMBER

3722

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/043,982

Applicant(s)

TAVERRITE, FRANK

Examiner

Mark T Henderson

Art Unit

3722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 05 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### **Faxing of Responses to Office Actions**

In order to reduce pendency and avoid potential delays, TC 3700 is encouraging FAXing of responses to Office Actions directly into the Group at (703)872-9302 (Official) and (703)872-9303 (for After Finals). This practice may be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into TC 3700 will be promptly forwarded to the examiner.

### ***Continued Prosecution Application***

1. The request filed on May 5, 2004 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 10/043,982 is acceptable and a CPA has been established. An action on the CPA follows.

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2. Claims 1 and 2 have been amended for further examination.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris (5,923,556) in view of Inoue (3,689,696).

Harris discloses in Fig. 1A and 1B, a graphic and sound coordinated item: a novelty item (10) having a visible surface (13a and 14a); a main graphic (21) displayed on the visible surface (13); and a complex sound waveform tracing (20), as stated in Col. 2, lines 25-51) displayed on the visible surface (14), wherein the complex sound waveform is associated with the main graphic. Harris further discloses a method of promotion comprising: selecting a substrate(10) with a viewing surface (13a and 14a); selecting an image (21) of an activity that promotes an activity to be printed and displayed on the viewing surface (13); selecting a complex wave form

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(electrocardiogram 20) of a sound, as stated in Col. 2, lines 25-51) and printing and displaying the waveform on the viewing surface (14).

However, Harris does not disclose an audio spectrograph tracing of a sound on a surface.

Inoue discloses in Fig. 2, 3, 5 and 8, an audio spectrograph tracing of a sound on a writable surface. (Col. 3, lines 19-68 and Col. 6, lines 23-68).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Harris' novelty item with an audio spectrographic tracing as taught by Inoue for the purpose of voice analysis and recording.

In regards to applicant's limitation of a "novelty item", the examiner submits that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. Therefore, the substrate of Harris is capable of being used for novelty purposes.

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***Response to Arguments***

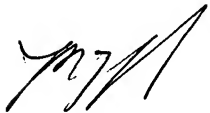
4. Applicant's arguments filed on May 5, 2004 have been fully considered but they are not persuasive.

In regards to applicant's argument that the Harris reference does not disclose an "audio spectrograph tracing of a sound", the examiner submits that the Inoue reference is now used to disclose a audio spectrograph tracing of a sound which is placed on a writable surface. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Harris' novelty item with an audio spectrographic tracing as taught by Inoue for the purpose of voice analysis and recording.

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**Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Henderson whose telephone number is (703)305-0189. The examiner can be reached on Monday - Friday from 7:30 AM to 3:45 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner supervisor, A. L. Wellington, can be reached on (703) 308-2159. The fax number for TC 3700 is (703)-872-9302. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the TC 3700 receptionist whose telephone number is (703)308-1148.



MTH

August 5, 2004



A. L. WELLINGTON  
SUPERVISORY PATENT EXAMINER  
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